THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos. 21597 OF 1996 & 1478 OF 1997

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W.P.No.21597 of 1996

Between:

The Depot Manager, APSRTC, Ranigunj-II Depot,
Secunderabad.

..... PETITIONER

AND

T.V. Arun Kumar, S/o. T.V. Narsaiah
H.No.6-6-464/1, Behind Praga Tools, Gandhinagar, Hyderabad &

others.

.....RESPONDENTS

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WRIT PETITION Nos. 21597 OF 1996 & 1478 OF 1997

O R D E R:

W.P.No.21597 of 1996 is filed by the Depot Manager, Ranigunj-II Depot, Secunderabad, against the award of the Labour Court, Hyderabad, in I.D.No.101 of 1994, dated 24.02.1996, in so far as the Labour Court directed reinstatement of the first respondent with 50% back wages. W.P.No.1478 of 1997 is filed by the workman against the very same award in so far as he was denied 50% back wages.

Since both the writ petitions question the very same award of the Labour Court, in I.D.No.101 of 1994, they are heard together and are being disposed of

by this common order. The parties shall hereinafter be referred to as they are arrayed in W.P.No.21597 of 1996.

Facts, to the extent relevant for this writ petition, are that the first respondent was appointed as a Conductor in the APSRTC on 03.01.1992 and was attached to Ranigunj depot. On 22.03.1993, while he was conducting bus No.AAZ 6446 on route 16 'S' Koti to Safilguda, the bus was checked at stage No.5/4. The Checking officials found certain irregularities for which a charge sheet was issued to the petitioner containing the following four charges:

i. "For having failed to complete ticket issues within one fare stage while conducting Bus No.6446 on route No.16 'S' on 22.03.1993.

ii. For having collected Rs.14/- @ Rs.2/- from 7 lady passengers i.e., 3 individual and 4 in two batches and issued unpunched ticket Nos.095/781741 to 781747 of Rs.2/- to the said passengers traveling from Sridevi Nursing Home to Safilguda (ex-stages 6/5 to 1) while conducting Bus No.6446 on route No.16 'S' on 22.03.1993.

iii. For having collected Rs.2.25ps. each from a batch of two lady passengers and issued unpunched ticket Nos.071/393642 to 393643 of Rs.2.25 ps. deno. who boarded his bus at Nallakunta and bound for Malkajgiri (ex. stages 8 to 2) while conducting Bus No.6446 on route No.16 'S' on 22.03.1993.

iv. For having collected Rs.2.50 ps. from three individual passengers and issued unpunched ticket Nos.062/243862 to 864 of Rs.2.50 deno. to them who boarded his bus at Shankermut and bound for Safilguda (ex-stages 8/7 to 1) while conducting Bus No.6446 on route No.16 'S' on 22.03.1993"

The first respondent submitted his explanation to the charge sheet on 06.04.1993. A domestic enquiry was ordered and the enquiry officer submitted his report holding that the charges alleged against the petitioner were proved. A show-cause notice dated 23.07.1993 was issued calling upon the first respondent to show cause as to why he should not be removed from service.

Along with the show cause notice, a copy of the enquiry report was also furnished to the first respondent. The first respondent submitted his explanation to the show cause notice and, thereafter, proceedings dated 31.07.1993 was passed removing the first respondent from service. The first respondent preferred an appeal to the Divisional Manager, APSRTC, which was rejected. Consequent thereto, he raised a dispute under Section 2-A(2) of the Industrial Disputes Act, 1947. The Labour Court, in exercise of its jurisdiction, under Section 11-A of the Industrial Disputes Act, re-appreciated the evidence and held that the alleged irregularity against the first respondent was that he failed to issue tickets within the fare stage and had issued unpunched tickets to 12 passengers, that it was not a case where the first respondent as a conductor had allowed ticketless passengers to travel, that the checking officials had categorically stated in their report that the first respondent had issued tickets to all the passengers and that from among 100 passengers in the bus, 12 passengers were found in possession of unpunched tickets. The statements of these 12 passengers were recorded. In the spot explanation, the first respondent had stated that due to heavy rush, he had issued unpunched tickets. The Labour Court found that since the bus was over crowded and was carrying nearly 100 passengers at that time, there was nothing on record to infer that the first respondent had any *mala fide* intention and simply because, some unpunched tickets were found in possession of a few passengers, it could not be inferred that the first respondent had issued those unpunched tickets with the intention of collecting the same for the purpose of re-issue. The Labour Court found that there was nothing in the statements recorded in Exs.M.3, M.4, M.5, of these 12 passengers, that the first respondent had made any attempt to collect back those unpunched tickets from them, nor was it the case of the Corporation that the first respondent had resorted to malpractice earlier. The Labour Court held that from the evidence on record, it was clear that it was a solitary instance when the first respondent had issued unpunched tickets to 12 passengers out of 100 passengers travelling in the bus and under those circumstances, it could not be inferred that the first respondent had issued the unpunched tickets wantonly and with the *mala fide* intention to collect the same for re-issuing once again. The Labour Court held that, in such circumstances, the findings of the enquiry officer were perverse and could not be sustained.

The Labour Court further held that even if it were assumed that the findings of the enquiry officer were correct and that the first respondent had committed misconduct alleged against him, the punishment of removal from service was grossly disproportionate to the gravity of the misconduct committed by him and since it was not a case of misappropriation of the amounts belonging to the Corporation by non-issuance of tickets or allowing passengers to travel without tickets and since the checking officials had admitted that tickets were issued to all the passengers in the bus, the order of removal, in effect, deprived the first respondent of his livelihood for a small irregularity of issuing unpunched tickets. The Labour Court, after holding that the punishment of removal from service imposed on the first respondent was disproportionate to the gravity of the misconduct, set aside the order of removal and directed that the first respondent be reinstated into service with 50% back wages from 31.07.1993 till his reinstatement into service.

Sri V.T.M.Prasad, learned Standing counsel appearing for the Corporation, would vehemently contend that the Labour Court had exceeded its jurisdiction in sitting in judgment over the findings of the enquiry officer. Learned counsel would submit that the interference of the Labour Court with regards the quantum of punishment is a clear case of misplaced sympathy and in such matters, involving failure of the Conductor to discharge his duties, the workman should atleast be denied back wages in its entirety.

I am afraid, I cannot agree with the submissions of the learned counsel. Section 11-A of the Industrial Disputes Act confers powers on the Labour Court to reappreciate the evidence on record and to come to a conclusion different from that of the disciplinary authority or the enquiry officer. The jurisdiction exercised by the Labour Court, under Section 11-A, is akin to that of a Court of appeal. The scope of Judicial review in Certiorari proceedings is however limited. It is only when the findings of the Labour Court can be categorized as perverse or as based on no evidence, would any interference be called for. On a perusal of the award of the Labour Court, I do not find any reason to hold that the findings recorded are either perverse or are based on no evidence. As such, the findings of the Labour Court with regards the alleged acts of misconduct does not call for any interference from this Court.

The next question which arises for consideration is regarding the quantum of punishment. While Sri V.T.M.Prasad, learned Standing counsel for APSRTC, would contend that the minimum punishment which ought to have been imposed by the Labour Court was one of complete denial of back wages, Sri. S.Ravindranath, learned counsel for the workman, would submit that since the Labour Court had held that the findings of the enquiry officer are perverse, the workman ought to have been given complete back wages and denial thereof, is without justification.

While it is true that the Labour Court had initially held that the findings of the Enquiry Officer are perverse and could not be sustained, in the next breath, the Labour Court held that the even if findings in the enquiry are held to be correct, the punishment imposed is disproportionate to the charges held proved. Substitution of the punishment imposed by the respondent-Corporation of removal from service to one of denial of 50% back wages is based on the finding of the Tribunal that even if the charges are held to be proved, the punishment imposed is disproportionate. Once the charges are held to be proved by the Labour Court, it cannot be said that the punishment, substituted by the Labour Court, to one of denial of 50% back wages, is a punishment which could not have been imposed by the Labour Court at all or is such a punishment, which would shock the conscious of this Court. This Court, in proceedings under Article 226 of the Constitution of India, does not sit in appeal over the decision of the Tribunal with regards quantum of punishment. The punishment of denial of 50% back wages, as substituted by the Labour Court for the one imposed by the APSRTC, does not call for any interference.

Both the writ petitions filed by the Corporation and the workman are dismissed. There shall however be no order as to costs.

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06.10.2005

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